

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

WARNER MUSIC GROUP CORP., *et al.*

Plaintiffs,

v.

MEGAUPLOAD LIMITED, *et al.*,

Defendants.

No. 1:14cv374
(LO / IDD)

**CONSENT MOTION OF DEFENDANT MEGAUPLOAD LTD.
FOR A STAY PENDING A PARALLEL CRIMINAL PROSECUTION**

Defendant Megaupload Limited (“Megaupload”) hereby moves for a continuation of the stay of this action, and, in support thereof, states as follows:

1. Plaintiffs filed this action on April 10, 2014, alleging claims for direct and secondary copyright infringement (Dkt. No. 1, *Complaint*). The defendants in this civil action are Megaupload, Vestor Limited (“Vestor”), Kim Dotcom (“Dotcom”), Mathias Ortmann (“Ortmann”), and Bram van der Kolk (“van der Kolk”), all of whom are foreign nationals (*Id.*, *Complaint* ¶¶ 18 – 22).

2. Megaupload and the other defendants in this civil action also have been indicted for racketeering, criminal copyright infringement, and other alleged crimes. *United States v. Kim Dotcom, et al.*, No. 1:12-cr-00003-LO (E.D. Va. filed Jan. 5, 2012) (“*Criminal Action*”). The *Criminal Action* is still pending, and none of the individual defendants have been extradited (although extradition proceedings have been underway for several years).

3. Defendants Megaupload, Dotcom, Vestor, Ortmann, and van der Kolk have been sued in two other civil actions in this Court related to the same conspiracy alleged in the

Criminal Action. Microhits, Inc. v. Megaupload, Ltd., No. 1:12cv327-LO/IDD (E.D. Va. filed Mar. 21, 2012) (“*Microhits Action*”); *Twentieth Century Fox Film Corp. v. Megaupload, Ltd.*, No. 1:14cv362-LO/IDD (E.D. Va. filed Apr. 7, 2014) (“*Twentieth Century Action*”). All three of these civil actions have been stayed, and recently the *Microhits Action* was dismissed. In particular, this action has been stayed by several prior orders (Dkt. Nos. 27, 36, 42, 44, 49, 52, 58, 60 & 62).

4. In opposition to Megaupload’s earlier stay motions, Plaintiffs expressed concerns about the preservation of certain digital evidence in the hands of Cogent Communications, Inc. (the “Cogent Data”) (Dkt. No. 47). Thereafter, some preservation issues materialized (Dkt. No. 50). The parties in this action and the *Twentieth Century Action*, as well as counsel for the United States in the *Criminal Action*, were then ordered to meet and confer regarding the preservation of the Cogent Data (*Twentieth Century Action*, Dkt. No. 58). Counsel met and conferred extensively to negotiate the terms of a preservation order. Ultimately, the parties agreed to most, but not all, terms, and Plaintiffs moved for entry of a preservation order (Dkt. No. 53), to which Megaupload responded with its own proposed form of order (Dkt. No. 56). Upon consideration of the parties’ filings, the Court entered the form of preservation order submitted by Plaintiffs (*Twentieth Century Action*, Dkt. No. 66).

5. With the preservation order in place and there being no other objection, Defendant Megaupload hereby moves the Court to enter the attached proposed order, continuing the stay in this case for an additional six months, subject to the terms and conditions stated in the proposed order.

6. Plaintiffs consent to continuation of the stay on the terms and conditions stated in the proposed order.

The parties do not seek oral argument on this motion.

WHEREFORE, Defendant Megaupload Ltd. respectfully requests that the Court enter the attached proposed order.

Dated: September 25, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2018, the foregoing was filed and served electronically by the Court's CM/ECF system upon all registered users:

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